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* **IN THE HIGH COURT OF DELHI AT NEW DELHI** **Reported**

Date of decision : April 19, 2007

\+ CRL.M.C. 2090/2005

KULDEEP KUMAR ..... Petitioner
Through Mr. Sunil Kumar, Advocate

versus

G.K.MISHRA & ORS. ..... Respondent
Through Mr. Pawan Sharma, Advocate for State
Mr. Pankaj Batra, Advocate for R1 to R6

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat (Open Court)

1. This petition under Section 482 seeks intervention by exercise of inherent jurisdiction of the court. The petitioner had filed a complaint alleging commission of offences under Sections 147/148/149/323/452/506/120-B IPC.

2. The allegations, in the complaint were that the accused persons on 30.1.2003, in the late evening entered his house started abusing him and started mercilessly beating his mother, brother and son. These along with the complainants, allegedly received serious injuries. It was alleged that the incident was witnessed by one Baleshwar Prasad, a local

respondent. The complainant/petitioner alleged that the police were called and the injured were taken to the Lal Bahadur Shastri Hospital and they were admitted. It was further alleged that subsequently due to some pressure a compromise was recorded. Later on coming to know about the lodging of an FIR, by the accused, the petitioners filed the complaint.

3. In the course of the proceedings before the learned Magistrate, six witnesses were examined in support of the petitioner's case. These included the injured persons as well as CW1 one Lama Ram, working as Constable. That witness produced the record and mentioned about the incident, in support of the complainant's version. Additionally, Baleshwar Prasad, the complainant's neighbour and alleged eye witness, who had seen the incident deposed in favour of the complainant.

4. The trial court by the order recorded as follows :

> *"On carefully scrutiny of the testimony of the witness, reveals that the complainant and the respondent are the neighbours and the respondent used to harassed the complainant and his family members, and as respondent wanted the complainant to sell his house. The complainant has made several complaints to the police. The respondent stated to have entered into house of the complainant on 31/03/03 and started abusing and beating the complainant and his family members. Police was called and the matter was somehow compromised. The complainant came to know on 12/7/03 that the police has registered a case U/S 323/325 of the IPC against the complainant and his family members of the incident dt. 31/03/03. The respondent is stated to have manipulated the MLC. The matter was reported to the senior police officers but no action has been taken against the respondent on the complaint of the complainant. Persual of the*

testimony of the witness and perusal of the case file reveals that the FIR No.310/03 U/s. 323/325/34 of the IPC is already on the record in which the complainant is the Gopi Kant Mishra who has been arrayed as respondent No.1 in the present complaint. Once the FIR against the complainant is already registered against the complainant and his family members. The present complaint appears to the court as counter blast of the FIR No.301/03 of the PS Shakar Pur in which the complainant and his family are the accused and the respondent no.1 is the complainant in the aforesaid FIR. The present complaint has been filed in view to arrive at desired result of compromise etc. as the FIR no.301/03 of the PS-Shakarpur is already registered against the complainant and his family members. It is the bounden duty of the court to curb the multiplicity of the litigation between the parties. As the summoning of the respondent will definitely will be a multiplicity of the proceeding between the parties which are neither desirable nor warranted. Needless to say, the complainant will be given ample opportunity to lead evidence in defence in the aforesaid proceeding in the state case and will be given fair chance to lead evidence in support of his complaint. Since the present complaint is the counter blast of the case FIR No.301/03 of the PS-Shakar Pur in which the complainant and his family member are the accused and the respondent no.1 G.K.Mishra is the complainant. I do not consider the testimony of the witnesses worthy of giving any credence.

Under aforesaid facts, circumstances and testimony held above I am of the considered opinion that the complaint is liable to be dismissed and consequently the complaint is dismissed. File be consigned to Record Room."

5. On the above reasoning the complaint was rejected. The petitioner preferred a revision to the learned Additional Sessions Judge. The latter dealt with the facts and narrated the sequence of events in the first part in paras 1 to 8 of his order. The only reasoning

adduced by the revisional court in support of its order, dismissing the revision was that the court found no infirmity in law or illegality in the observations of the trial court.

6. Counsel urged that the reasoning of the courts below in rejecting the complaint namely avoidance of multiplicity of litigations or proceedings is hardly a justification for refusing to issue a process when the materials on record amply bore out commission of an offence. It was also contended that the FIR lodged by the respondent/accused was in fact motivated. That FIR was irrelevant at the stage of summoning and that the court was strictly bound to see whether the ingredients of the offences concerned were made out in the evidence, and proceed in accordance with law.
7. Learned counsel for the State submitted that the approach of the courts below appeared to be casual and also commented that the observations that it is open to the complainant to urge his points in the course of the proceedings as an accused in the FIR lodged by the respondents, cannot be construed as correct. It was submitted that the petitioner as a complainant had every right to bring to the notice of court or set into motion the process about the commission of offence earlier in March, 2003.
8. Learned counsel for the contesting respondents No.1 to 6 resisted the petition and submitted that the approach of the trial court as affirmed the revisional court cannot be faulted with. He relied upon on the circumstance that the complaint had been lodged after a considerable delay of four months. It was submitted that the alleged incident occurred on 31.3.2003 whereas the complainant approached the court exactly four months later. Counsel contended that even assuming though not admitting the lodging of the FIR by the respondent/accused to be a justifiable reason for the delay,

nevertheless a further delay of about 18 days in the lodging of the complaint was not explained. These, it was contended, amount to multiplicity on the part of the complainant/petitioner.

9. Learned counsel also contended that taken in totality there was no reliable evidence that could have impelled the courts to issue process. It was submitted that the reasoning of the trial court namely avoidance of multiplicity of proceedings and the lodging of the FIR by respondents No.2 to 6 were valid and justifiable reasons for rejecting the complaint. It is also contended that once the matter is carried in revision and the revisional court also found no infirmity with the order of the trial court there was hardly any scope of interference. It is also contended that the so-called independent witness namely Baleshwar Prasad, who is said to have seen the incident in March, 2003 was also arrayed as an accused in the subsequent FIR.

10. Having considered the materials on record it appears that the trial court seems to be unduly influenced by the so-called compromise arrived at between the parties, said to have been arrived at in March, 2003. There were six witnesses who deposed in the proceedings including the family members of the petitioner as well as two outsiders; one of them was a police constable who had brought the records to show that an incident had occurred on the date alleged. Another person namely Baleshwar Prasad also deposed in the proceedings. At that stage the question as to whether the petitioner or any of the witnesses was arrayed as an accused elsewhere or the veracity of the statement of such persons in the complaint proceedings lodged by the petitioner, in the allegations of the FIR, in my considered opinion have arisen and in any case

considered by the trial court.

11. The courts below in my opinion fell into error in seeing the subsequent lodging of the FIR as the motivation for the complaint and were influenced into infer that the complaint would have resulted in multiplicity of proceedings. That is hardly a ground to reject a complaint. The court has to apply its mind to the facts of the case and see independently whether the materials justify an order summoning the accused. There is no discussion on the veracity or otherwise of the deposition of the six witnesses and the circumstance which were spoken about by CW1.

12. In view of the above conclusions, I am of the opinion that this petition ought to be argued. The matter is accordingly remitted to the learned trial court for appropriate proceedings in accordance with law.

13. The petition is allowed in the above terms. Nothing said in this order shall be construed as an expression on the merits of the case. All rights and contentions of the parties are kept open.

(S.RAVINDRA BHAT)
JUDGE

APRIL 19, 2007
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